DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
2300 E STREET NW
WASHINGTON DC 20372-5300

IN REPLY REFER TO

BUMEDINST 6010.18
BUMED-36
18 May 93

BUMED INSTRUCTION 6010.18

From: Chief, Bureau of Medicine and Surgery
To: Ships and Stations Having Medical Department Personnel

Subj: PARTICIPATION IN THE NATIONAL PRACTITIONER DATA BANK (NPDB)

Ref: (a) DoD Directive 6025.14 of 1 Nov 90 (NOTAL)
(b) DoD Instruction 6025.15 of 9 Nov 92 (NOTAL)
(c) DoD Directive 6025.11 of 20 May 88 (NOTAL)
(d) SECNAVINST 6320.23
(e) BUMEDINST 6320.66A
(f) DoD Directive 6025.13 of 17 Nov 88 (NOTAL)
(g) BUMEDINST 6010.13
(h) DoD Directive 6025.6 of 6 Jun 88 (NOTAL)
(i) SECNAVINST 6401.2A
(j) BUMEDINST 6320.67
(k) Freedom of Information Act, Exemption b(5)
(l) 10 U.S.C., section 1102
(m) SECNAVINST 5212.5C

Encl: (1) Querying Procedures
(2) Privileging Action Reporting Procedures
(3) Claims Reporting Procedures

1. Purpose. To establish Bureau of Medicine and Surgery (BUMED) policy, assign responsibility, and prescribe procedures for complying with references (a) and (b).

2. Background. The National Practitioner Data Bank (NPDB) was established on 1 September 1990 as a result of the Health Care Quality Improvement Act of 1986, per final regulations published by the Department of Health and Human Services (HHS) in 1989. The NPDB collects and maintains information concerning payments made on behalf of a physician, dentist, or other practitioner for settlement of, or in satisfaction of, a claim or judgment for malpractice and concerning adverse actions taken regarding the clinical privileges of practitioners. This information is available to health care entities who meet certain conditions. Although the act does not directly apply to military medical and dental treatment facilities, Congress directed HHS to enter into a memorandum of understanding (MOU) with the Secretary of Defense (SECDEF) to apply the provisions of the act to hospitals, other facilities, and practitioners under the jurisdiction of SECDEF.

In 1987, HHS and the Department of Defense (DoD) entered into an MOU confirming DoD's participation in the national reporting system established under the act. References (a) and (b) implement DoD's participation in the NPDB. The responsibility assigned to the Surgeon General of the Navy in reference (b) will be executed through authority as Chief, BUMED.

3. Applicability. Applies to all military (active duty and Reserve) and civilian health care practitioners as defined in references (c), (d), and (e) who are assigned to, employed by, or provide contracted or internal partnership services within naval medical activities. "Employed by" is further defined to include volunteers of the American Red Cross gratuitously supporting Government personnel in the delivery of services to members and beneficiaries of the Armed Forces.

4. Definitions

a. Health Care Entity. A hospital, ambulatory health care clinic, or dental clinic with an independent health care practitioner staff that carries out professional staff review and provides health care to medical or dental patients. The term also includes applicable professional staff components of the naval service, as designated by the Chief, BUMED, performing peer review as part of the Quality Assurance Program required by references (f) and (g).

b. Licensed Practitioner. Any physician, dentist, or health care practitioner or one of the professions whose members are required to possess a professional license or other authorization, as prescribed in references (h) and (i).

5. Policy. All official correspondence with the NPDB must be conducted by BUMED.

a. As part of the accession and employment or contract process for all health care practitioners, every effort must be made to require the applicant to provide a copy of the NPDB self-query. Health care practitioners can request information from the NPDB on themselves; however, BUMED is unable to conduct an NPDB query until an application for clinical privileges is received.

b. The NPDB must be queried at the time a health care practitioner applies for clinical privileges at a health care entity and at least every 24 months thereafter as part of the reprivileging procedures required by reference (e). BUMED querying procedures are outlined in enclosure (1).

c. Reports of cases of adverse privileging action must be made to the NPDB as outlined in enclosure (2) and reference (j).

d. Reports of claims payment must be made to the NPDB as outlined in enclosure (3). References (k) and (l) cite the exemption from disclosure.

6. Responsibilities

a. The BUMED Medico-Legal Affairs Division (MED-36) must:

(1) Release required reports to the DoD, Armed Forces Institute of Pathology (AFIP), NPDB, Federation of State Medical Boards of the United States, and other professional licensure agencies. All claims closed with a monetary payment after 1 September 1990 will be reviewed for possible report to the NPDB using the procedures set forth in enclosure (3).

(2) Maintain a record of all cases reported to outside agencies following reference (m).

b. The Professional Affairs Branch of the BUMED Quality Assurance Division (MED-35) must ensure all required NPDB queries are performed.

7. Report and Forms

a. DD 2499 (10-92), Health Care Provider Action Report, required by enclosure (2), is assigned report control symbol DD-HA(AR)1611(6010). This report is approved by the Chief of Naval Operations for 3 years from the date of this instruction.

b. DD 2499 (10-92), Health Care Provider Action Report, and DD 2526 (10-92), Case Abstract for Malpractice Claims, are available from BUMED (MED-36).

c. SF 95 (7-85), Claim for Damage, Injury, or Death, NSN 7540-00-634-4046, is available from the Federal Supply System through normal supply procurement procedures.

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QUERYING PROCEDURES

1. Querying. The NPDB must be queried on all health care practitioners who are new accessions to, employed by, contracted to, or under a partnership agreement with the Department of the Navy (DON). A query must be completed on all current health care practitioners in the same categories. A current query, although required to be conducted, is not an essential element in determining the disposition of an application for professional staff appointment, clinical privileges, or reappointment per references (d) and (e). Querying must be conducted following the procedures indicated below:

a. For direct accessions, recalls to active duty, and interservice transfers to DON, MED-51 is responsible for coordinating with other naval activities to ensure the NPDB self-query requirement is incorporated into the application process. Applicants are required to provide a current copy of the NPDB self-query for submission with their package for review by the applicable professional review board. Paragraph F1c of reference (b) requires each military department to query the NPDB during the accession process.

b. For practitioners reporting for duty following completion of the Navy Active Duty Delay for Specialists (NADDS) Program, MED-35 is responsible for conducting the NPDB query upon notification that the practitioner has applied for professional staff appointment and privileges and for providing the results to the practitioner's privileging authority.

c. For students reporting from the Armed Forces Health Professions Scholarship Program and the Uniformed Services University of the Health Sciences, MED-35 is responsible for conducting the NPDB query upon notification that the practitioner has applied for professional staff appointment and privileges and for providing the results to the practitioner's privileging authority.

d. For new civil service employees, commanding officers are responsible for coordinating with their local human resources office to require applicants for employment to provide a current copy of the NPDB self-query for review by the applicable professional review board. This requirement should be negotiated for inclusion as part of the human resources office support agreement. MED-35 is responsible for conducting the NPDB query upon notification that the practitioner has applied for professional staff appointment and privileges and for providing the results to the practitioner's privileging authority.

e. For new contract or internal partnership practitioners, the commanding officer is responsible for instituting procedures to ensure the practitioner provides a current copy of the NPDB self-query before approval of the practitioner's application for professional staff appointment and privileges. MED-35 is responsible for conducting the NPDB query upon notification that the practitioner has applied for professional staff appointment and privileges and for providing the results to the practitioner's privileging authority.

f. For volunteers of the American Red Cross gratuitously supporting Government personnel in the delivery of services to members and beneficiaries of the Armed Forces, the commanding officer is responsible for instituting procedures to ensure the practitioner provides a current copy of the NPDB self-query before approval of the practitioner's application for professional staff appointment and privileges. MED-35 is responsible for conducting the NPDB query upon notification that the practitioner has applied for professional staff appointment and privileges and for providing the results to the practitioner's privileging authority.

g. The practitioner's privileging authority is responsible for validating the copy of the practitioner's self-query by comparing it to the copy ultimately obtained and provided by MED-35.

h. MED-35 must establish a method in the Centralized Credentials Data Base (CCDB) to indicate the dates that queries are performed. Approximately 90 days before the second anniversary of the most recent query, MED-35 must generate another NPDB query. Upon receipt, MED-35 must forward the results to the practitioner's designated privileging authority for inclusion in the practitioner's individual credentials file (ICF).

PRIVILEGING ACTION REPORTING PROCEDURES

1. When adverse privileging action, per reference (j), results in the denial, limitation, or revocation, in whole or part, of a practitioner's professional staff appointment or clinical privileges, MED-36 will:

a. Prepare the Health Care Provider Action Report (DD 2499), enter information as appropriate into the risk management data base, and transmit information as required to the Department of Legal Medicine, Armed Forces Institute of Pathology (AFIP).

b. Release required information to the NPDB, AFIP, and other professional licensing agencies as appropriate within 15 days of:

(1) Notification that the practitioner will not appeal the final action of the privileging authority as defined in reference (j).

(2) Completion of the appeal procedures set forth in reference (j).

2. A provider who separates from active duty or whose business relationship with the DON ends and whose clinical privileges are suspended at the time, must be reported to the AFIP, NPDB, and other professional licensing agencies as appropriate.

CLAIMS REPORTING PROCEDURES

1. Policy. The Chief, BUMED is responsible for reviewing all cases in which a monetary payment has been made following the submission of a claim alleging harm arising out of malpractice. If the Chief, BUMED determines that the payment was for the benefit of a health care practitioner, a report in the name of the practitioner must be forwarded for inclusion in the NPDB. To assist the Chief, BUMED, a Professional Case Review Panel (PCRP) is created which must review all such cases. The PCRP will render an opinion on whether the standard of care was met and recommend to the Chief, BUMED the name of any practitioner who should be reported to the NPDB. The report of the PCRP and its deliberations are exempt from disclosure under references (k) and (l).

2. Responsibilities Upon Notification of a Closed Malpractice Claim

a. Medico-Legal Affairs Division (MED-36) will:

(1) For cases involving no payment

(a) Notify each practitioner, responsible for the care that was at issue, that the claim has been closed with no payment made and that no report will be provided to the NPDB. Such notification will offer no opinion regarding the adequacy of the care that was at issue. Attachment A is a sample letter which may be used for notification. A copy of this letter can be placed in the practitioner's individual credentials file (ICF).

(b) Complete and submit the Case Abstract for Malpractice Claims, DD 2526, to the Department of Legal Medicine, Armed Forces Institute of Pathology (this can be done electronically).

(c) Review the BUMED case file for retention or disposal following reference (m). For files retained, establish a destruction date.

(2) For cases involving payment

(a) Compile a case file that includes, if available: copies of the Judge Advocate General Manual (JAGMAN) investigation with all enclosures and endorsements, all specialty reviews, the claim, and available closed claims documentation; e.g., correspondence from the Judge Advocate General (Claims and Tort Litigation Division), the Department of Justice or United States Attorney, and settlement agreement or judgment.

(b) Forward a copy of the case file by certified mail, return receipt requested, to each practitioner identified as a potential subject of an NPDB report. Advise the practitioner that they have been identified as a potential subject of an NPDB report, that the case file will be used by the PCRP to form a basis for rendering opinions and making recommendation to the Chief, BUMED for possible NPDB reporting, and that they have 15 days to submit written comments for consideration by the PCRP. Upon application and showing good cause, the 15 days may be extended. Reasonable efforts to notify all practitioners must be undertaken; however, absence of notification despite reasonable efforts will not preclude NPDB reporting. Attachment B is a sample letter which may be used for this notification.

(c) Prepare a review file for use by the PCRP upon receipt of the practitioner's comments or upon expiration of the applicable timeframe for response. The review file must consist of the case file and the practitioner's comments, if any. With the exception noted below, no written matters will be submitted to the PCRP that have not previously been provided to the practitioner for comment. Where notification to the practitioner cannot be made despite reasonable efforts, the review file must contain documentation reflecting the efforts to make notification. In such instances, it can be considered by the PCRP.

b. PCRP

(1) Membership

(a) Members must be from the same corps or civilian equivalent as that of the practitioner who is the potential subject of an NPDB report. There is no requirement that members be of the same medical, dental, nurse, or ancillary subspecialty. Seniority, civilian, minority, and gender representation should be considered, but is not mandatory.

(b) The Chief, Navy Medical Corps; Chief, Navy Dental Corps; Chief, Medical Service Corps; and Director, Navy Nurse Corps will each appoint an officer to represent their communities in matters involving the PCRP. At the request of MED-36, the officer representing the community of a practitioner who is the potential subject of an NPDB report must identify a minimum of three members to perform as the PCRP. The officer designated to represent the community of a practitioner potentially subject to NPDB reporting may, but need not, act as a PCRP member.

(c) PCRP members may not take part in the review of a claims reporting case in which the member participated as a practitioner or for which the member acted as investigating officer or specialty reviewer.

(2) Administrative Support

(a) The PCRP meets at the call of MED-36.

(b) MED-36 provides administrative support to the PCRP and may take part in deliberations of the PCRP, but has no vote.

(3) Deliberations

(a) PCRP reviews are not adversary proceedings.

(b) Neither potential subjects of NPDB reports nor their personal representatives will be permitted to make a personal appearance before the PCRP.

(c) The review file, pertaining to the medical malpractice payment compiled by MED-36, must be reviewed by the PCRP. It will include, if reasonably available:

1. A copy of the JAGMAN investigation with all enclosures and endorsements.

2. All specialty reviews.

3. Available closed claim documentation.

4. A copy of the Federal Tort Claims Act (FTCA) claim or other claim.

5. A copy of the settlement agreement or judgment.

6. The provider's statement.

(d) The PCRP may, if requested by the majority of its members, seek additional documents for consideration. These must be referred to the practitioner for comment before they are considered by the PCRP.

(e) The PCRP's report to the Chief, BUMED must be based solely on the above written matters.

(f) The PCRP must use the following standards to determine whether an NPDB report should be recommended:

1. Monetary payment must have been made in response to a claim either as a settlement or court action.

2. The practitioner or trainee must have been responsible for an act or omission that was the cause (or a major contributing cause) of a harm that gave rise to payment in response to a claim.